
Issue Brief for Congress

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Environmental Protection Issues in the 107th Congress

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Environmental Protection Issues in the 107th Congress

SUMMARY

The 107th Congress enacted brownfields, bioterrorism, and a sediment contamination statutes. In addition, it provided FY2002 funding to the Environmental Protection Agency (EPA) and other government agency environmental programs, and continued FY2002 funding into FY2003.

Many other bills received committee or floor action. H.R. 4, the comprehensive energy bill, which has numerous environmental provisions; the EPA and Department of Defense appropriations bills for FY2003; bills authorizing HUD and the Economic Development Administration (EDA) brownfield programs; legislation authorizing EPA regulation of pesticide exports; bills to extend water infrastructure funding programs; and legislation to address chemical plant security. **Table 1** provides a summary of environmental legislation on which there has been some action.

Superfund/Brownfields. In the first session, Congress enacted P.L. 107-118, the Small Business Liability Relief and Brownfield Revitalization Act. On June 4, 2002, the House passed H.R. 2941 to enhance the Department of Housing and Urban Development's brownfields program. The Senate Environment and Public Works Committee reported S. 1079 (S.Rept. 107-244) on August 28, 2002, to provide \$60 million per year for the EDA's brownfield program.

Energy Bill. House and Senate conferees did not complete action on a comprehensive energy package, H.R. 4, that includes a number of environmental provisions. Both versions address drinking water contamination from MTBE, a gasoline additive, and the Senate version would have

banned future use of MTBE in gasoline. The Senate version would have also required the use of renewable fuels in electricity generation and motor fuels. The House version of H.R. 4 would have reauthorized EPA's climate change programs, while the Senate version would have established a new Office of National Climate Change Policy and would have created a national greenhouse gas database.

Security Issues. S. 1602, as reported, and its companion, H.R. 5300, would have required EPA to identify and regulate sources of potentially disastrous, accidental or criminal, chemical releases. Action also occurred on several water infrastructure security bills. The Bioterrorism Preparedness Act (P.L. 107-188) authorized funding for drinking water vulnerability assessments and security upgrades.

Appropriations. In the first session, Congress appropriated \$7.9 billion for EPA, for FY2002, plus another \$176 million in supplemental funding for anti-terrorism activities. On July 25, 2002, the Senate Appropriations Committee approved \$8.3 billion for EPA for FY2003 in reporting S. 2797 (S.Rept. 107-222). The Administration has requested \$7.6 billion. In addition to funding for EPA, consideration of authorization and appropriations bills for defense-related environmental activities is also underway. A continuing resolution provided funding at the same level as enacted for FY2002, until a final appropriations bill was enacted for FY2003. (The 108th Congress enacted P.L. 108-7 (H.J.Res. 2), an omnibus appropriation bill which includes about \$8.1 billion for EPA for FY2003.)

MOST RECENT DEVELOPMENTS

House and Senate conferees did not complete action on their versions of the comprehensive energy legislation, H.R. 4. The Senate-passed version of H.R. 4 would have banned the gasoline additive methyl tertiary butyl ether (MTBE), allow waiving the Clean Air Act's gasoline oxygen content requirements, required the use of renewable fuels in electricity generation and motor fuels, establish the Office of National Climate Change Policy, and create a national greenhouse gas database; the House version would have reauthorized EPA's climate change programs; both House and Senate versions would have authorized funds to address MTBE contamination of drinking water.

On July 25, 2002, the Senate Committee on Appropriations approved \$8.3 billion for EPA for FY2003, in reporting S. 2797 (S.Rept 107-222). A continuing resolution provided funding at the same level as enacted for FY2002, until a final appropriations bill was enacted for FY2003. (The 108th Congress enacted P.L. 108-7 (H.J.Res. 2), an omnibus appropriation bill which includes about \$8.1 billion for EPA.) Congress completed actions authorizing and funding most of DOD's environmental programs.

Congress has acted on a variety of other environmental bills during the second session. On September 5, 2002, the Senate passed S. 351, limiting the use of mercury thermometers and encouraging proper management of mercury. The Great Lakes Legacy Act (P.L. 107-303, H.R. 1070) authorizes \$200 million for the Environmental Protection Agency to carry out projects to remediate sediment contamination in the Great Lakes. The Senate Environment and Public Works Committee reported S. 1079 (S.Rept. 107-244) on August 28, to provide \$60 million per year for the Economic Development Administration's brownfield program. On June 4, the House passed H.R. 2941, a bill to enhance municipalities' ability to take advantage of the Department of Housing and Urban Development's brownfields program. The Bioterrorism Preparedness and Response Act (P.L. 107-188, H.R. 3448), enacted on June 12, authorizes funding for vulnerability assessments and security upgrades by drinking water utilities.

BACKGROUND AND ANALYSIS

This issue brief provides an overview of environmental protection legislation and issues considered by the 107th Congress. (For a description of environmental protection laws, see CRS Report RL30798, *Environmental Laws: Summaries of Statutes Administered by the Environmental Protection Agency*.)

The authorizations for most environmental protection programs have expired, although program authorities remain in effect and legislative action to provide funding has continued. **Table 1** shows the action taken on legislation in the 107th Congress.

**Table 1. Action on Environmental Protection Legislation
in the 107th Congress**

Superfund and Brownfields		
P.L. 107- 118 (H.R. 2869- combined provisions of House -passed H.R. 1831 and Senate-passed S.350)	Signed 01/11/02	Provides certain relief for small businesses under Superfund, promotes the cleanup and reuse of brownfields, provides financial assistance for brownfields revitalization
H.R. 2941	Passed House 06/4/02	HUD Brownfield Program
S. 1079	Reported by Senate Environment and Public Works 08/28/02 (S.Rept. 107-244)	Economic Development Administration Brownfield Assistance
Pesticides		
P.L. 107-73 (H.R. 2620)	Signed 11/26/01	The FY2002 EPA Appropriations include extending EPA authority to collect pesticide reregistration fees for one year
H.R. 1/S. 1	Passed Senate 06/14/01 (dropped in conference)	Requires state pesticide management plans for schools
S. 1731	Passed Senate 02/13/02 (dropped in conference)	Includes provisions on school pesticide management plans and fees
H.R. 2581	Reported (amended) by House Armed Services 03/08/02 (H.Rept. 107-297)	Authorizes EPA to prohibit export of certain pesticides and chemicals
Air Quality		
S. 556	Ordered reported by Senate Environment and Public Works 06/27/02	Requires power plants to reduce emissions of four pollutants (including CO2)
S. 950 H.R. 4	Reported by Senate Environment and Public Works 12/20/01 (S.Rept. 107-131) H.R. 4, as passed by the Senate 04/25/02, includes S. 950 provisions as sections 831-839; H.R. 4 passed the House 08/02/01. Conferees continue to meet	Bans the use of MTBE as a fuel additive H.R. 4 also triples the use of ethanol (\$820)
Chemical Plant Security		
S. 1602	Ordered reported by Senate Environment and Public Works 07/25/02	Requires EPA to identify high priority chemical risks and to issue regulations requiring owners and operators of stationary sources to take actions to prevent, control, and minimize the potential consequences of a release
Water Quality		
P.L. 107-303 (H.R. 1070)	Signed 11/27/02	authorizes assistance for remediation of sediment contamination
H.R. 3930	Ordered reported by House Transportation and Infrastructure 04/17/02	Extends Clean Water Act wastewater infrastructure funding

S. 1961	Reported by Senate Environment and Public Works 07/29/02 (S.Rept. 107-228)	Extends wastewater and drinking water infrastructure funding
P.L. 107-303 (H.R. 1070)	Signed 11/27/2002	Contaminated sediment legislation
H.R. 5169	Reported by House Transportation and Infrastructure 09/05/02 (H.Rept. 107-645)	Authorizes funds for vulnerability assessments of wastewater utilities
Drinking Water		
P.L. 107-188 (H.R. 3448)	Signed 06/12/02	Authorizes \$120 million for vulnerability assessments and emergency response plans to protect drinking water systems (incorporates parts of House-passed H.R. 3178, Senate-reported S. 1593 and Senate-passed S. 1608)
H.R. 4, §504 H.R. 4, §832	Passed House 08/02/01 Passed Senate 04/25/02	Both bills authorize \$200 million to clean up MTBE at underground tanks. The Senate bill authorizes additional funds for enforcing tank regulations and for research
S. 1850	Ordered reported by Senate Environment and Public Works 07/25/02	Authorizes increased appropriations from the Leaking Underground Storage Tank (LUST) Trust Fund for cleaning up gasoline and MTBE leaks. Imposes new requirements on states and tank owners
Solid Waste		
H.R. 4, §3306 H.R. 4 §2310	Passed House 08/02/01 Passed Senate 04/25/02	Tax credits for the production of energy from landfill gas; Senate version encourages the production of ethanol from municipal solid waste
S. 351	Passed Senate 09/05/02	Authorizes programs to limit use of mercury thermometers
Climate Change		
H.R. 4	Passed House 08/02/01 Passed Senate 04/25/02	Both versions authorize EPA climate programs; Senate version establishes Office of National Climate Change Policy to develop a climate change response strategy; Senate version establishes a voluntary greenhouse gas database
H.R. 1646	Passed House 05/16/01	Encourage U.S. leadership to reduce greenhouse gas emissions and continue participating in climate change negotiations
H.R. 2460	Reported from House Science (H.Rept. 107-177) 07/31/01	Authorizes EPA Climate Change Programs
P.L. 107-228 (H.R. 1646)	Signed 09/30/02	Prohibits U.S. contributions to the United Nations Budget from being used to implement the Framework Convention on Global Climate Change (Kyoto Protocol)
EPA Funding		
P.L. 107-73 (H.R. 2620)	Signed 11/26/01	Appropriated \$7.9 billion in FY2002 for EPA programs

P.L. 107-117 (H.R. 3338, Div B)	Signed 01/10/02	Appropriated \$176 million in supplemental FY2002 funding for EPA terrorist-related activities
P.L. 107-206 (H.R. 4775)	Signed 08/02/02	Appropriates \$50 million to EPA in supplemental funding for FY2002 for drinking water vulnerability assessments if the President requests emergency funds
S. 2797	Reported by Senate Appropriations (S.Rept. 107-222) 07/25/02	Appropriates \$8.3 billion for EPA for FY2003
H.R. 5605	Reported by House Appropriations (H.Rept. 107-740)	Appropriates \$8.3 billion for EPA for FY2003
Environmental Science and Technology		
H.R. 64	Passed House 05/30/02	Establishes an EPA Deputy Administrator for Science and Technology
Defense Environmental Programs		
P.L. 107-117 (H.R.3338)	Signed 01/10/02	Defense Appropriations for FY2002 and Emergency Supplemental, includes environmental activities
P.L. 107-64 (H.R. 2904)	Signed 11/05/01	Military Construction Appropriations for FY2002, contains funding for cleaning up base closure sites
P.L. 107-66 (H.R. 2311)	Signed 11/12/01	Energy and Water Development Appropriations for FY2002, contains funding for defense-related nuclear waste management
P.L. 107-107 (S.1438)	Signed 12/28/01	Defense Authorization Act for FY2002, includes environmental activities
P.L. 107-314 (H.R. 4546)	Cleared 11/13/02	Defense Authorization Act for FY2003, includes environmental activities
P.L. 107-248 (H.R. 5010)	Signed 10/23/02	Defense Appropriations for FY2003, includes environmental activities
P.L. 107-249 (H.R. 5011)	Signed 10/23/02	Military Construction Appropriations for FY2003, funding for closed bases cleanup
S. 2784	Reported by Senate Appropriations 07/24/02 (S.Rept. 107-220)	FY2003 Energy and Water Appropriations contains funding for defense related nuclear waste management
H.R. 5431	Reported by House Appropriations 09/24/02 (H.Rept. 107-681)	FY2003 Energy and Water Appropriations contains funding for defense related nuclear waste management
P.L. 107-206 (H.R. 4775)	Signed 08/02/02	Provides supplemental funding of \$70 million in FY2002 for security at DOE defense nuclear waste cleanup sites, if the President requests such funds
Environmental Streamlining Funding		
P.L. 107-87 (H.R. 2299)	Signed 12/18/01	DOT Appropriations includes funds for environmental streamlining initiatives

Clean Air Act (by James McCarthy)

Clean air issues were discussed at length in the 107th Congress, but little action was taken, leaving the same issues for consideration in the 108th Congress. The most prominent air quality issue was whether to modify state and federal regulations designed to protect air quality in order to promote energy production. Of particular interest were the Clean Air Act's New Source Review requirements, which some argue have prevented power plants from making improvements that would expand power output. A related issue is whether Congress should modify Clean Air Act requirements for power plants by enacting "multi-pollutant" legislation, which, it is argued, would both reduce emissions and encourage investment in new plants by providing certainty regarding future regulatory requirements. Both the House and Senate passed comprehensive energy legislation (H.R. 4) in the 107th Congress, but neither version of the bill contained provisions addressing these issues; the bill died in conference. The Senate Environment and Public Works Committee narrowly approved multi-pollutant legislation (S. 556) June 27, 2002, but the Administration and much of the electric power industry opposed the bill, and it did not reach the Senate floor. The bill would have required power plants to reduce emissions of sulfur dioxide, nitrogen oxides, mercury, and carbon dioxide.

A second set of air issues Congress considered concerns regulation of the gasoline additive MTBE. MTBE is used to meet Clean Air Act requirements that gasoline sold in the nation's worst ozone nonattainment areas contain at least 2% oxygen, but the additive has been implicated in numerous incidents of ground water contamination. The Senate version of H.R. 4 would have banned the use of MTBE in gasoline within 4 years, eliminated the 2% oxygen requirement, preserved the emission reductions achieved by reformulated gasoline, and required a tripling of the use of ethanol or other renewable fuels in motor vehicles by 2012. The House did not have comparable requirements in its version of H.R. 4—one of many areas in which the House and Senate-passed bills differed. On August 1, 2001, the House rejected an attempt to exempt California from the oxygen requirement (the Cox amendment to H.R. 4). H.R. 4 died in conference, leaving MTBE and other issues to be considered by the 108th Congress. (For additional information on clean air issues, see CRS Issue Brief IB10065, *Clean Air Act Issues in the 107th Congress*.)

Chemical Plant Security (by Linda Schierow)

The 107th Congress considered, but did not enact legislation to reduce risks of terrorism at facilities handling large quantities of potentially dangerous chemicals. Such facilities might be vulnerable to direct attacks or covert use of business contacts, facilities, and materials to gain access to chemicals. Risks may be increasing, consequences for human health and the environment could be severe, and limited evidence suggests that many chemical facilities may lack adequate safeguards. Policy makers face three key issues: the effect of public access to information about facilities' hazards and risk management plans; the relative importance of diverse risks; and who should be responsible for achieving results. For more on this topic, see CRS Report RL31530, *Chemical Plant Security*.

S. 1602, as reported by the Senate Committee on Environment and Public Works, and House companion H.R. 5300 would require EPA, in consultation with the Office (or

Department) of Homeland Security, to identify high priority chemical risks and to issue regulations requiring owners and operators of stationary sources to take actions to prevent, control, and minimize the potential consequences of a release. Facilities would be required to consider chemical and process changes that enhance inherent safety. The bill would exempt vulnerability assessments and risk management plans from Freedom of Information Act (FOIA) requirements. H.R. 4698 would have authorized the Secretary of Commerce to issue licenses to qualified persons and to restrict the sale, purchase, and distribution of certain chemicals to licensees. S. 2579 would have amended the Clean Air Act to eliminate the names and locations of facilities from publicly available facility risk management plans, and made public disclosure of such information by government officials a crime. The bill also would have expanded official access to the plans.

The bill that established the new Department of Homeland Security, H.R.5005, does not address chemical plant security directly. However, if facilities are part of the “critical infrastructure” (as are water utilities, for example), the new law will exempt from FOIA requirements information about the plants’ vulnerability to terrorism if it is submitted voluntarily to the Department. The Department of Homeland Security is required to analyze vulnerabilities and recommend methods of enhancing site security.

Surface Transportation and the Environment (by David Bearden)

Meeting public needs for surface transportation, while ensuring that the protection of the environment is not compromised, has been a longstanding issue among states and affected communities in local areas. The Transportation Equity Act for the 21st Century (TEA21, P.L. 105-178) authorized funding for federal highway and mass transit programs from FY1998 to FY2003. Of this amount, over \$12 billion was reserved for several programs to mitigate the environmental impacts of surface transportation. Most of this funding was reserved for air quality projects to assist states in complying with federal air quality standards. The law also increased funding for environmentally related transportation enhancements, established several new programs, and required the environmental review process for highway projects to be streamlined. (CRS Report 98-646 ENR, *Transportation Equity Act for the 21st Century (P.L. 105-178): An Overview of Environmental Protection Provisions*, provides additional information.)

During the 107th Congress, several oversight hearings were held to examine the Department of Transportation’s implementation of TEA21. Oversight of the law’s environmental provisions focused primarily on the implementation of requirements to streamline the environmental review process for highway projects. While the law did not specify a deadline for meeting these requirements, some Members expressed disappointment that the Department of Transportation’s actions have mostly been administrative in nature, and that 4 years after the enactment of the law, streamlining regulations have yet to be finalized. The lack of final regulations has increased interest in legislative action to speed project delivery and meet public demands for transportation infrastructure. Two bills were introduced toward the end of the 107th Congress to address the streamlining issue: H.R. 5455 and S. 3031. Although there were differences between the two bills, both included proposals to grant the Secretary of Transportation greater authority over the environmental review

process, establish statutory deadlines for various aspects of the review process, and allow qualified states to assume certain federal responsibilities. (CRS Report RS20841, *Environmental Streamlining Provisions in the Transportation Equity Act for the 21st Century: Status of Implementation*, provides additional information on this issue.)

Debate over the reauthorization of TEA21 is expected to begin early in the 108th Congress. Due to ongoing concerns over highway project delays, whether to take firmer actions to streamline the environmental review process will likely be a prominent issue, and proposals similar to the two bills mentioned above may be considered. The use of federal highway funding for air quality projects under the Congestion Mitigation and Air Quality Improvement Program (CMAQ) will be a likely topic of discussion as well. The findings of a National Academy of Sciences study have raised questions regarding the program's impact on state efforts to comply with federal air quality standards. Consequently, proposals to enhance the effectiveness of the CMAQ program, or to possibly shift its focus away from air quality to reducing traffic congestion in general, may be considered. The adequacy of funding to support other environmentally related transportation programs may also be addressed.

Clean Water Act Issues (by Claudia Copeland)

The 107th Congress did not enact comprehensive legislation affecting the Clean Water Act (CWA). However, in November, the House and Senate gave final approval to a bill amending one portion of the Act, legislation entitled the Great Lakes Legacy Act (P.L. 107-303, H.R. 1070). It authorizes \$200 million for the Environmental Protection Agency to carry out projects to remediate sediment contamination in the Great Lakes.

During the 107th Congress, committees focused attention on legislation to authorize water infrastructure funding. The House Transportation and Infrastructure Committee approved a bill to extend the Clean Water Act's program that assists municipal wastewater treatment projects through FY2007 (H.R. 3930); the Senate Environment and Public Works Committee approved similar legislation (S. 1961, S.Rept. 107-228). (For information, see CRS Report RL31344, *Water Infrastructure Financing Legislation: Comparison of S. 1961 and H.R. 3930*.) Neither bill received further action due to controversies about provisions in both such as a new formula for state-by-state allocation of federal funds and application of requirements under the Davis-Bacon Act to pay prevailing wages on federally funded projects. Water infrastructure financing issues are likely to be a priority in the 108th Congress.

More generally, following the September 11, 2001, terrorist attacks on the World Trade Center and the Pentagon, congressional attention focused on security, preparedness, and emergency response issues. One topic of interest is protection of the nation's water infrastructure facilities (both drinking water and wastewater) from possible physical damage, biological/chemical attacks, and cyber disruption. (For information, see CRS Report RS21026, *Terrorist and Security Issues Facing the Water Infrastructure Sector*.) Policymakers considered a number of legislative options in this area, including enhanced physical security, communication and coordination, and research. In December 2001, Congress appropriated \$176 million in funds to EPA for water infrastructure and other security activities (P.L. 107-117), and in May 2002, Congress passed legislation authorizing

funding for drinking water utility vulnerability assessments (P.L. 107-188). In October, the House passed a bill authorizing grants for vulnerability assessments by wastewater utilities (H.R. 5169, H.Rept. 107-645). Similar legislation was introduced in the Senate (S. 3037).

The CWA is the principal law that governs pollution in the nation's lakes, rivers, and coastal waters and authorizes funds to aid construction of municipal wastewater treatment plants. The Act was last comprehensively amended in 1987, and authorizations for most programs expired on September 30, 1990. Activities under the Act continue, however, as Congress has regularly appropriated funds to implement the law. Although no comprehensive reauthorization legislation was enacted during the 106th Congress, activity on bills dealing with specific water quality issues did occur, and oversight hearings on some existing provisions of the Act and Clinton Administration water quality initiatives were held. Throughout this period, Congress has considered possible actions to implement existing provisions of the CWA, whether additional steps are necessary to achieve the overall goals of the Act, and the appropriate federal role in guiding and paying for clean water activities. (For further information, see CRS Issue Brief IB10069, *Clean Water Act Issues in the 107th Congress*.)

Safe Drinking Water Act (by Mary Tiemann)

The Safe Drinking Water Act (SDWA) is the principal federal statute for regulating the quality of water provided by public water systems. Congress last reauthorized the Act in 1996, authorizing funding for SDWA programs through FY2003. (For a review of the Act, see CRS Report RL31243, *Safe Drinking Water Act: A Summary of the Act and Its Major Requirements*.) Key issues in the 107th Congress included drinking water infrastructure needs and funding, and the security of the Nation's water supplies. Water infrastructure financing may continue to be of interest in the 108th Congress.

A major SDWA issue has concerned the ability of public water systems to comply with a growing number of complex drinking water rules. Congress authorized a drinking water state revolving fund (DWSRF) program in 1996 to help communities finance projects needed to comply with SDWA rules. Since FY1997, Congress has provided roughly \$5.2 billion for the program, including \$850 million for FY2002. However, a large funding gap remains and is expected to grow as new rules increase needs and infrastructure ages. (See CRS Report 97-677, *Safe Drinking Water Act: State Revolving Fund Program*.) On July 29, 2002, the Senate Environment and Public Works Committee reported S. 1961 (S.Rept. 107-228), a drinking water and wastewater infrastructure financing bill which would have increased funding authority for the DWSRF and would have provided \$5 billion over 5 years for a small drinking water system grant program. (See CRS Report RL31344, *Water Infrastructure Financing Legislation: Comparison of S. 1961 and H.R. 3930*.)

The 107th Congress also acted on drinking water security legislation. The emergency supplemental appropriations for FY2002 (P.L. 107-117) contains \$90.3 million for activities including assessing the vulnerabilities of drinking water utilities, and \$5 million for state grants for assessing drinking water safety. On June 12, 2002, the President signed the Bioterrorism Preparedness Act (P.L. 107-188, H.R. 3448) which authorized \$160 million for drinking water utilities to conduct vulnerability assessments, prepare emergency response plans, and make basic security enhancements. Additionally, the Act authorized funding for

water infrastructure security research and for emergency assistance to states and public water systems. (See CRS Report RL31294, *Safeguarding the Nation's Drinking Water: EPA and Congressional Actions*.)

Legislation also targeted specific contaminants. At least 13 bills addressed the problem of the gasoline additive methyl tertiary butyl ether (MTBE) being detected in drinking water supplies. (See CRS Report 98-290 ENR, *MTBE in Gasoline: Clean Air and Drinking Water Issues*.) House and Senate versions of the energy bill, H.R. 4, proposed to authorize the appropriation of \$200 million from the Leaking Underground Storage Tank (LUST) Trust Fund to respond to MTBE contamination. (Also see CRS Report RS21201, *Leaking Underground Storage Tanks: Program Status and Issues*.) Numerous bills were introduced regarding the regulation of arsenic in drinking water, after EPA delayed a rule issued in January 2001 to reduce the arsenic standard from 50 parts per billion (ppb) to 10 ppb. After reviewing the research and analyses for the arsenic rule, EPA announced that the standard will be 10 ppb. Many in Congress had objected to the delay, and the conference report for EPA's FY2002 appropriations (P.L. 107-73, H.Rept. 107- 272) prohibited EPA from using funds to delay the rule. The rule entered into effect on February 22, 2002, with a compliance deadline of 2006 for public water systems. Several bills (e.g., H.R. 1252 and H.R. 1413) proposed new funding to assist small systems in complying with the arsenic standard specifically. In addition, S. 1961 and other bills (e.g., H.R. 1178/S. 503, H.R. 3224, and S. 1299) would have authorized grant programs to help small communities comply with all SDWA standards. S. 1593, a water security research bill, included \$40 million to assist small communities in complying with arsenic requirements. (For more information, see CRS Report RS20672, *Arsenic in Drinking Water: Recent Regulatory Developments and Issues*.)

Superfund and Brownfields (by Mark Reisch)

The Small Business Liability Relief and Brownfields Revitalization Act passed both chambers on December 20, 2001, and was signed into law on January 11, 2002 (P.L. 107-118, H.R. 2869). It amends the Superfund Act, formally known as the Comprehensive Environmental Response, Compensation and Liability Act, or CERCLA, which is the principal federal law for cleaning up spills and other discharges of hazardous substances. The brownfields program for cleaning up less serious hazardous waste sites was initiated administratively by EPA under the aegis of the Superfund program, and the current enactment establishes the statutory authority for the brownfields program as well as providing it with funding separate from the Superfund program.

The Small Business Liability Relief Act, Title I of H.R. 2869, exempts from CERCLA liability for cleanup costs those persons who disposed of "de minimis" quantities of material containing hazardous substances (less than 110 gallons of liquid or less than 200 pounds of solid material) at sites on the National Priorities List prior to April 1, 2001. It also exempts from liability residential property owners, small businesses, and small non-profit organizations who sent municipal solid waste to a site that was later listed on the NPL. A party who sues someone who is exempted from liability due to these provisions must pay the exempted party's attorney's fees and court costs. The act also authorizes EPA to reduce the amount of a settlement for a small business or other person who demonstrates an inability or limited ability to pay for cleanup.

Title II of the Act would authorize \$200 million per year for 5 years for grants to local governments, states, and Indian tribes to inventory, assess, and clean up brownfield sites. The lesser of \$50 million or one-fourth of the annual appropriation would be dedicated to cleaning up “relatively low-risk” brownfield sites contaminated by petroleum, which is not presently allowed by CERCLA. The grants would be awarded competitively based on ranking criteria in the Act. An additional \$50 million per year would be provided to establish and enhance state and tribal cleanup programs. EPA would be prohibited from enforcement activities at sites in a state cleanup program except in certain circumstances, such as an imminent and substantial danger to public health or the environment. Title II also provides liability protection from CERCLA for property contaminated by a contiguous site, for prospective purchasers, and for innocent landowners. It requires states to maintain a public record of brownfield sites; and directs the President to defer listing an eligible site on Superfund’s National Priorities List (NPL) if a state so requests, so long as the state is making progress in addressing it.

On November 19, 2002, the Senate passed S. 606 (S.Rept. 107-320) to establish an independent ombudsman in EPA to assist the public and conduct investigations concerning the programs administered by the Office of Solid Waste and Emergency Response. These include the solid and hazardous waste programs, Superfund and brownfield activities, leaking underground storage tanks, and oil spills.

The House passed H.R. 2941 on June 4, 2002. The bill enhances municipalities’ (especially smaller ones) ability to take advantage of the Dept. of Housing and Urban Development’s brownfields program. The Senate Environment and Public Works Committee reported S. 1079 on April 25, 2002, to provide \$60 million per year for the Economic Development Administration’s brownfield program.

Issues that the 108th Congress may consider are the dwindling balance of the Superfund trust fund, oversight of the new brownfields law, and, if they are not enacted in the current session, successor bills to those referred to above: S. 606, H.R. 2941, and S. 1079. (For further discussion, see CRS Issue Brief IB10078, *Superfund and Brownfields in the 107th Congress*.)

Solid Waste Issues (by James McCarthy)

The principal legislation affecting solid waste in the 107th Congress was in the comprehensive energy bill (H.R. 4), which the Senate passed on April 25, 2002, and the House passed August 2, 2001. The bill died in conference, leaving the solid waste issues and other issues addressed by H.R. 4 for consideration by the 108th Congress.

In the House version of H.R. 4, Section 3306 contained tax credits for the production of energy from landfill gas. The provision would have reinstated tax credits under Section 29 of the Internal Revenue Code that had expired in 1998. The credits would have been equal to more than \$1.00 per thousand cubic feet of gas produced, and would have been allowed for facilities placed in service between July 1, 1998 and December 31, 2006. They would have applied to all gas produced at such facilities for a 5-year period beginning on the date of enactment or the onset of production (whichever was later). Facilities required to collect gas under Clean Air Act regulations would have qualified for smaller credits.

Section 2310 of the Senate version of H.R. 4 also would have reinstated Section 29 credits for production of energy from landfill gas, but for a more restricted period of time. The credits would have applied for a 3-year period, and would have applied to facilities placed in service after the date of enactment and before January 1, 2005. The Senate bill also included provisions to encourage the production of ethanol from municipal solid waste; the House bill had no comparable provision.

Interstate shipment of solid waste, caused in part by the closure of old landfills, continues to be of some interest to the Congress. In March 2001, New York City closed Fresh Kills landfill, the last remaining landfill within city limits. [The landfill was temporarily re-opened to handle debris from the World Trade Center, but it is no longer handling any municipal garbage.] Fresh Kills was once the largest landfill in the United States, accepting 13,000 tons of waste per day in 1996, when the decision to close it was made. The city has few in-state disposal options, and, as a result of the landfill's closure, is now sending virtually all of its garbage out of state. It has long been argued that the closure of Fresh Kills, in addition to mounting exports of waste from other large cities, might provide the stimulus for Congress to address solid waste legislation; but the event came and went without congressional action. Several bills addressing interstate shipment of waste were introduced but there was no action on any of them.

The Senate passed S. 351, a bill to amend the Solid Waste Disposal Act to limit the use of mercury fever thermometers and to improve the management of mercury collected from waste and from surplus stocks. The House did not take up the issue.

Defense Cleanup and Environmental Programs (by David Bearden)

Although the Environmental Protection Agency is the primary federal agency responsible for the control of pollution and the cleanup of civilian environmental contamination, the Department of Defense (DOD) is responsible for remediating contamination and controlling pollution at military facilities. DOD administers five environmental programs, including cleanup, compliance, pollution prevention, environmental technology, and conservation. In addition to DOD's programs, the Department of Energy (DOE) is responsible for managing defense nuclear waste and cleaning up contaminated nuclear weapons sites. Some of the principal issues associated with these programs are the adequacy, cost, and pace of cleanup, whether DOD and DOE adequately comply with environmental laws and regulations, and the extent to which environmental requirements encroach upon military readiness.

The first session of the 107th Congress authorized and appropriated funding in FY2002 for national defense programs: the National Defense Authorization Act for FY2002 (P.L. 107-107), Department of Defense Appropriations Act for FY2002 (P.L. 107-117), Military Construction Appropriations Act for FY2002 (P.L. 107-64), and Energy and Water Development Appropriations Act for FY2002 (P.L. 107-66). These laws provided nearly \$10.8 billion for DOD's and DOE's defense-related environmental programs, and the Administration requested almost \$11.2 billion for FY2003.

The second session of the 107th Congress completed action on legislation to authorize national defense programs for FY2003, including funding for DOD and DOE's defense-related environmental programs. As enacted, the conference agreement on P.L. 107-314 (H.R. 4546, H.Rept. 107-772) authorizes \$1.32 billion for environmental cleanup at current and former military installations, and it would authorize \$565 million for base closure activities, which would include the cleanup of environmental contamination. As in past years, funding for environmental compliance, pollution prevention, environmental technology, and conservation would be authorized primarily under the Operation and Maintenance, Procurement, and Research and Development Accounts. A total of \$6.76 billion would be authorized for DOE's management of defense nuclear waste and cleanup of contaminated nuclear weapons sites. The conference agreement also contains several other environmentally related provisions, including an interim exemption for military readiness activities from certain requirements under the Migratory Bird Treaty Act. However, the conference committee did not adopt House proposals to provide broad exemptions from the Endangered Species Act and targeted exemptions from the Wilderness Act.

The second session also completed action on FY2003 appropriations for DOD, including its environmental programs. P.L. 107-248 (H.R. 5010) appropriated \$1.31 billion for environmental cleanup at current and former military installations, \$6 million less than the funding level of \$1.32 billion that would be authorized under H.R. 4546, and nearly \$34 million more than the FY2002 appropriation of \$1.28 billion. As in defense authorization legislation, funding for environmental compliance, pollution prevention, environmental technology, and conservation will come primarily from appropriations for the Operation and Maintenance, Procurement, and Research and Development Accounts. P.L. 107-249 (H.R. 5011) appropriated \$561 million for base closure activities, which includes support for the cleanup of environmental contamination, \$4 million less than the funding level of \$565 million that would be authorized under H.R. 4546, and \$72 million less than the FY2002 appropriation of nearly \$633 million. The 107th Congress did not complete action on FY2003 appropriations for DOE's defense nuclear waste management and cleanup responsibilities. A continuing resolution (P.L. 107-294, H.J.Res. 124) provides funding for these activities at the FY2002 funding level of approximately \$6.49 billion through January 11, 2003. Final appropriations for FY2003 are expected to be considered early in the first session of the 108th Congress. Funding for FY2004 will be considered during the first session as well. (CRS Report RL31456, *Defense Cleanup and Environmental Programs: Authorization and Appropriations for FY2003*, provides additional information.)

Global Climate Change

(by Susan Fletcher and Brent Yacobucci)

The key piece of climate change legislation in the 107th Congress was the Senate version of H.R. 4, the comprehensive energy bill. This version would establish an Office of National Climate Change Policy to develop a climate change response strategy. Further, the Senate version of H.R. 4 would, among other things, establish a voluntary greenhouse gas database and promote research and development on climate change. The House version of the bill contained reauthorization language for EPA's climate-related programs. The Congress adjourned without reconciling these bills. The 107th Congress had also included climate

change provisions in the House and Senate State Department authorization bills (though these were dropped in conference), in some versions of appropriation bills, and in a number of other bills.

Concern that the increases in “greenhouse gases” in the atmosphere has caused warming of the Earth’s climate has led to a number of international responses, as well as issues of interest to the U.S. Congress. One of the main issues for Congress over the past several years has been oversight of the U.S. negotiations related to the Kyoto Protocol to the 1992 United Nations Framework Convention on Climate Change (UNFCCC), which involve potential rules for how climate change might be addressed by the United States and other nations, and what policies are appropriate domestically to address climate change concerns. However, since the Bush Administration rejected the Kyoto Protocol, the issues for Congress have been evolving as the Administration’s positions have developed. On February 14th, 2002, the Administration announced a series of voluntary measures intended to reduce greenhouse gas emissions, plus some increased climate related funding. The cornerstone of this new approach is the reduction of greenhouse gas intensity – that is, greenhouse gas emissions per unit of production.

It is likely that climate change and greenhouse gas issues will again be the subject of legislation or hearings in the 108th Congress.

(For further discussion , see CRS Issue Brief IB89005, *Global Climate Change*; CRS Report RL30692, *Global Climate Change: The Kyoto Protocol*; CRS Report RL31205, *Climate Change and Relevant Legislation in the 107th Congress*; and the “Congressional Bills” section of the CRS electronic briefing book on Global Climate Change, at [<http://www.congress.gov/brbk/html/ebgcc1.html>].)

Regulating Pesticides (by Linda Schierow)

The 107th Congress considered, but did not enact legislation to reduce risks of terrorism at facilities handling large quantities of potentially dangerous chemicals. Such facilities might be vulnerable to direct attacks or covert use of business contacts, facilities, and materials to gain access to chemicals. Risks may be increasing, consequences for human health and the environment could be severe, and limited evidence suggests that many chemical facilities may lack adequate safeguards. Policy makers face three key issues: the effect of public access to information about facilities’ hazards and risk management plans; the relative importance of diverse risks; and who should be responsible for achieving results. For more on this topic, see CRS Report RL31530, *Chemical Plant Security*.

S. 1602, as reported by the Senate Committee on Environment and Public Works, and House companion H.R. 5300 would require EPA, in consultation with the Office (or Department) of Homeland Security, to identify high priority chemical risks and to issue regulations requiring owners and operators of stationary sources to take actions to prevent, control, and minimize the potential consequences of a release. Facilities would be required to consider chemical and process changes that enhance inherent safety. The bill would exempt vulnerability assessments and risk management plans from Freedom of Information Act (FOIA) requirements. H.R. 4698 would have authorized the Secretary of Commerce to issue licenses to qualified persons and to restrict the sale, purchase, and distribution of

certain chemicals to licensees. S. 2579 would have amended the Clean Air Act to eliminate the names and locations of facilities from publicly available facility risk management plans, and made public disclosure of such information by government officials a crime. The bill also would have expanded official access to the plans.

The bill that established the new Department of Homeland Security, H.R. 5005, does not address chemical plant security directly. However, if facilities are part of the “critical infrastructure” (as are water utilities, for example), the new law will exempt from FOIA requirements information about the plants’ vulnerability to terrorism if it is submitted voluntarily to the Department. The Department of Homeland Security is required to analyze vulnerabilities and recommend methods of enhancing site security.

Funding the Environmental Protection Agency (by Martin R. Lee)

For FY2002, the President requested \$7.3 billion in discretionary budget authority for EPA. P.L. 107-73 (H.R. 2620), signed on November 26, 2001, provided \$7.9 billion. P.L. 107-117 (H.R. 3338, Division B), the FY2002 Emergency Supplemental Act, provided supplemental funding of \$176 million for EPA activities related to anti-terrorism. P.L. 107-206 (H.R. 4775) would have provided \$50 million in additional supplemental funding in FY2002 for drinking water vulnerability assessments, but in August, the President announced he would not spend contingent emergency funds in the bill, including EPA funds.

For FY2003, the President requested \$7.6 billion in discretionary budget authority for EPA, nearly \$460 million less than the FY2002 funding level of \$8.1 billion, which included the \$176 million in supplemental funding for anti-terrorism activities. The requested decrease is primarily due to the Administration’s proposal to discontinue funding for various activities that received earmarked funding in FY2002, the majority of which consisted of water infrastructure projects. As part of its FY2003 budget request, the Administration also has proposed to shift more enforcement responsibilities to the states. On July 25, 2002, the Senate Appropriations Committee approved \$8.3 billion for EPA for FY2003 in reporting S. 2797 (S.Rept. 107-222), restoring much of last year’s earmarked funding for water infrastructure projects. Continuing resolution provides funding at the same level as enacted for FY2002, until a final appropriations bill was enacted for FY2003. On October 10, 2002, the House Appropriations Committee reported H.R. 5605, authorizing an FY2003 appropriation of \$8.3 billion. (The 108th Congress completed action on the FY2003 appropriations adopting a level of \$8.1 billion for EPA in P.L. 108-7 (H.J.Res. 2), signed February 20, 2003). (See CRS Issue Brief IB10101, *The Environmental Protection Agency’s FY2003 Budget*, for further discussion.)

Environmental Research and Development (by Michael Simpson)

The 107th Congress acted to consider specific ways to improve the quality of science at EPA, to fund Agency programs, and to authorize the EPA Office of Air and Radiation and EPA’s climate change programs.

S. 1176 (Environmental Research Enhancement Act of 2001) and House-passed H.R. 64 would establish a Deputy Administrator for Science and Technology (S&T) and an Assistant Administrator for Research and Development. Both proposed new duties for some EPA offices to try to improve the quality of science acquired, reviewed, used by, and disseminated from the Agency.

The Administration requested \$641 million for EPA's S&T account for FY2002. The House-passed version of H.R. 2620 included \$680 million; the Senate-passed version, \$666 million. Signed on November 26, PL107-73 provided \$698 million for S&T, and transferred \$37 million from the Superfund account. The Administration requested \$670 million for EPA Science and Technology for FY2003. In Senate Report 107-222 accompanying S. 2797, the Appropriations Committee recommended \$710 million for S&T, \$78 million below the enacted level including supplemental funding, and the Committee recommended transferring \$86 million from the Superfund account, for a total of \$796 million for S&T. The Senate Appropriations Committee denied a proposal to cease funding the Science to Achieve Results fellows grants program and recommended \$9.75 million.

As passed by the House on August 2, 2001, and the Senate on April 25, 2002, with the last conference held on October 3, 2002, H.R. 4 *inter alia* authorizes EPA climate programs. Earlier, two bills in the 107th Congress would authorize appropriations for EPA's Office of Air and Radiation, and EPA's Climate Change Protection Programs. Placed on the Union Calendar on July 31, 2001, H.R. 2460 Subtitle G authorizes them for FY2002 at \$157 million, FY2003 at \$163 million, and FY2004 at \$169 million. Of these amounts, the following would be for science: \$28 million for FY2002, \$29 million for FY2003, and \$31 million for FY2004. For climate change programs, \$128 million would be allocated for FY2002, \$134 million for FY2003, and \$139 million for FY2004. As placed on the Senate Legislative Calendar on September 4, H.R. 4 Subtitle G would authorize \$122 million for FY2002, \$127 million for FY2003, and \$132 million for FY2004 for Climate Protection Programs (information about these programs can be found in CRS Issue Brief IB10020, *Energy Efficiency: Budget, Oil Conservation, and Electricity Conservation Issues*). H.R. 4 also makes EPA responsible for emissions monitoring, measurement, verification, and data collection as part of a voluntary greenhouse gas database.

One significant issue for the 108th Congress likely will be funding EPA's work on homeland security and other concerns. EPA's FY2003 S&T budget request included \$75 million for homeland security efforts, including research and development of ways to more rapidly and effectively decontaminate buildings, detect terrorism hazards, and transfer new technologies to first-responders (see CRS Report RS21270 *Counterterrorism Research and Development* for related information). Other FY2003 S&T budget requests include \$10.8 million for researching aggregate exposure and cumulative risk of pesticide exposures, \$9.8 million for a national competition to encourage the use of innovative environmental technologies, and \$4.9 million for research into possible allergenicity and ecological effects of engineered crops.